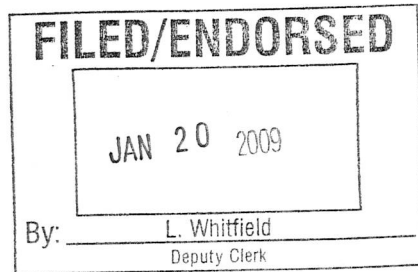


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10  
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SACRAMENTO**  
13

14 PROFESSIONAL ENGINEERS IN  
15 CALIFORNIA GOVERNMENT;  
16 CALIFORNIA ASSOCIATION OF  
PROFESSIONAL SCIENTISTS,

17 Petitioners/Plaintiffs,

18 vs.

19 ARNOLD SCHWARZENEGGER, Governor;  
20 STATE OF CALIFORNIA;  
DEPARTMENT OF PERSONNEL  
ADMINISTRATION;  
21 STATE CONTROLLER JOHN CHIANG;  
and DOES 1 THROUGH 20, inclusive,

22 Respondents/Defendants.  
23

Case No. 34-2008-80000126  
Related Cases: 34-2009-80000134 and  
34-2009-80000135

24 **CONTROLLER'S OPPOSITION TO**  
25 **REPOENDENTS'/DEFENDANTS'**  
26 **DEMURRER TO VERIFIED**  
27 **PETITIONS FOR WRIT OF**  
28 **MANDATE AND COMPLAINTS FOR**  
**DECLARATORY AND INJUNCTIVE**  
**RELIEF**

Date: January 29, 2009  
Time: 9:00 a.m.  
Dept: 19

**Exempted from Fees (Govt. Code § 6103)**

24 Respondent/Defendant JOHN CHIANG, California State Controller (hereinafter  
25 "Controller") respectfully submits this Opposition to the Demurrer of ARNOLD  
26 SCHWARZENEGGER, Governor; STATE OF CALIFORNIA; and DEPARTMENT OF  
27 PERSONNEL ADMINISTRATION (collectively "Respondents"), to the Petitions for Writ of  
28

1 Mandate and Complaints for Declaratory Relief and Injunctive Relief filed on December 22,  
2 2008, by Petitioners/Plaintiffs PROFESSIONAL ENGINEERS IN CALIFORNIA  
3 GOVERNMENT (PECG) and CALIFORNIA ASSOCIATION OF PROFESSIONAL  
4 SCIENTISTS (CAPS); on January 5, 2009 by CALIFORNIA ATTORNEYS,  
5 ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS IN STATE  
6 EMPLOYMENT; and on January 7, 2008, by Petitioner/Plaintiff SERVICE EMPLOYEES  
7 INTERNATIONAL UNION LOCAL 1000.  
8

### 9 INTRODUCTION

10  
11 In this pleading the Controller addresses both the Demurrer of Respondents and the  
12 Petitions and Complaints of the Petitioners in all of the related cases. As to the Petitions and  
13 Complaints, the Controller is in concurrence and incorporates by reference the arguments made  
14 therein. Like the Petitioners, the Controller concludes that the Governor is without authority to  
15 unilaterally furlough state employees. Therefore, this office has no intention of implementing  
16 the reduction in pay as contemplated in the Governor's Order, unless determined otherwise by a  
17 court of law.  
18

### 19 STATEMENT OF FACTS

20 In the interests of brevity and judicial economy the Controller's Office incorporates by  
21 reference the statements of fact found in all previously filed pleadings in these cases.  
22

### 23 LAW & ARGUMENT

24 I. A DEMURRER IN THIS CASE IS INAPPROPRIATE SINCE THE CORE ISSUE IS THE  
25 AUTHORITY OF THE GOVERNOR TO ORDER THE FURLOUGH, NOT THE PROCESS  
26 OF COLLECTIVE BARGAGING OR OTHER DILLS ACT ISSUES.  
27  
28

1 Respondents attempt to frame the argument in the context of a Dills Act issue, by citing  
2 Government Code<sup>1</sup> section 3516.5, as authority for the Governor's executive order. However,  
3 the real question in this case is whether the Governor actually has the authority to impose a  
4 furlough on state employees. Review of Section 3516.5 reveals its inapplicability to the case at  
5 hand. Section 3516.5 is only a procedural section, which simply permits the employer (the  
6 Governor) to meet and confer *after* the adoption of a law, rule, resolution, or regulation in cases  
7 of emergency, rather than *before*. However, this section does not grant the Governor the  
8 authority to take any specific action or contravene the authority or intent of the Legislature (as  
9 reflected in Sections 19826(b), 19851, and 19852). It is clear that Section 3516.5 does not  
10 provide the Governor the authority to impose a furlough on state employees, or to take any  
11 other action not already provided for in law. Therefore, the question pending before this court  
12 is whether or not the Governor has the authority to impose the furlough. And over this question  
13 this court unquestionably has jurisdiction.

14 When we look at Sections 19826(b), 19851 and 19852, it becomes clear that not only  
15 does the Governor not have affirmative authority to furlough, but there is also an explicit  
16 statutory prohibition against such action. Section 19826(b) prohibits Respondent Department of  
17 Personnel Administration from establishing, adjusting, or recommending a salary for  
18 represented employees. Sections 19851 and 19852 establish the forty hour work week for all  
19 state employees, providing for the possibility of a 4 day, forty hour week. None of these  
20 sections evinces an intent on the part of the Legislature to relinquish their ultimate authority  
21 over the wages of state employees. *Lowe v. Resources Agency* (1991) 1 Cal.App.4<sup>th</sup> 1140,  
22 1151. The determination of the meaning of Sections 19826(b), 19851, and 19852, is one of  
23 statutory interpretation. This process is handled on a regular basis by trial courts in this state;  
24 no special administrative expertise is required, nor of any benefit, in this case.

25 Respondents' in their Demurrer attempt to argue that Section 19826(b) [and presumably  
26 19851 and 19852] is rendered inoperative, or superceded, by the fact that an MOU is effective  
27

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28 <sup>1</sup> All further statutory references shall be to the Government Code unless otherwise indicated.

1 under Section 3517.8(a). However, such an argument misapprehends the effect of Section  
2 3517.6 on existing statutes. That section specifically provides that the enumerated statutory  
3 provisions are only superceded when the MOU and the statute are in *conflict*. In this case, the  
4 Respondent has neither alleged nor demonstrated that any provision of the MOU is in conflict  
5 with Section 19826(b). Therefore, the provisions of Section 19826(b) are in full force and  
6 effect, prohibiting the Governor from altering the salaries of represented employees, and  
7 presenting an issue of law that is appropriately before this court.

8  
9 II. RESPONDENTS' EXHAUSTION OF ADMINISTRATIVE REMEDIES ARGUMENTS  
10 CONVENIENTLY IGNORE THE PRESENCE OF SUPERVISORY EMPLOYEES AMONG  
11 THE PETITIONERS, WHO ARE EXCEPTED FROM THE DILLS ACT.

12 Demurrer is also inappropriate because the Public Employees Relations Board (PERB)  
13 does not have jurisdiction over all of the Petitioners. Petitioners Professional Engineers In  
14 California Government (PECG) and California Association Of Professional Scientists (CAPS)  
15 are supervisory employee organizations pursuant to Section 3527(c), as well as duly certified  
16 exclusive collective bargaining representatives for represented employees, pursuant to Section  
17 3520.5. [See Petition of PECG and CAPS at ¶¶ 1 and 2.] In the former capacity they represent  
18 supervisory employees, who are excepted from the Dills Act, and thus not subject to the  
19 jurisdiction of PERB. [See Sections 3513(c), 3527(b), and 3531.] These supervisory employees  
20 provide an independent basis for jurisdiction for this court, rendering the Respondents arguments  
21 concerning the application of the doctrine of exhaustion of administrative remedies as to  
22 represented employees, moot. Therefore, those supervisory employees are properly before this  
23 court and demurrer would be inappropriate.

24 III. DEMURRER WOULD BE INAPPROPRIATE BECAUSE THERE REMAIN  
25 OUTSTANDING ISSUES BETWEEN THE CONTROLLER AND RESPONDENDTS,  
26 WHICH ARE NOT WITHIN THE JURISDICTION OF PERB.

27 A dismissal upon demurrer is only appropriate when it resolves all outstanding issues  
28 before the parties. However, the Respondents' demurrer does not resolve the issues between the  
Respondents and the Controller. The Controller is a constitutional officer, and as such is not  
under the direct authority of the Governor. *McCauley v. Brooks* (1860) 16 Cal. 11. The

1 Controller has independent duties as provided for in both the Constitution and in statute. In  
2 carrying out those duties, the Controller has the authority to determine whether a decision made  
3 by an agency, which impinges on the operations of the Controller, is within the fundamental  
4 jurisdiction of that agency. *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1333. After review  
5 of the Governor's Executive Order (S-16-08), the Controller has come to the conclusion that it  
6 is not within the fundamental jurisdiction of either the Governor or DPA to unilaterally furlough  
7 state employees. This is because the ultimate authority over salaries is placed in the legislature,  
8 and "DPA can act only to the extent and in a manner consistent with the legislative delegation  
9 of authority." *Id* at 1323. And neither the Governor nor DPA has been able to cite a delegation  
10 of authority that supports such action. Therefore, the Controller has no intention of  
11 implementing the Governor's furlough plan, absent a ruling to the contrary from a court of law.  
12 PERB has no jurisdiction over the Controller and therefore cannot provide any resolution of this  
13 outstanding conflict.

14 Although the Controller has been nominally named as a Respondent/Defendant, his  
15 interests are more closely aligned with the Petitioners', as noted above. But for the short  
16 timeframe, the Controller would have filed a formal motion to realign the parties, seeking to be  
17 redesignated as a Petitioner/ Plaintiff. Given the practical opposition of the Controller and the  
18 Respondents, and the lack of jurisdiction by PERB over the Controller, it is appropriate for this  
19 court to retain jurisdiction over this matter to resolve the outstanding issues.

## 20 CONCLUSION

21  
22 The issues presented by the petitions are predominately related to the authority of the  
23 Governor to impose the furlough he seeks, not the Dills Act. Since any Dills Act issues are  
24 nominal at best, and there are parties who are not subject to the jurisdiction of PERB,  
25 jurisdiction of the case should be retained by this court, and the demurrer denied.  
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27  
28

1 Dated: January 20, 2009

2 OFFICE OF THE STATE CONTROLLER

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4  
5 By: 

6 RICHARD J. CHIVARO, Chief Counsel  
7 Attorney for Respondent/Defendant  
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